

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION**

CHARLES DERRYBERRY

PLAINTIFF

v.

No. 4:09CV1-MPM-DAS

CHRISTOPHER EPPS, ET AL.

DEFENDANTS

REPORT AND RECOMMENDATION

The court takes up, *sua sponte*, the dismissal of this prisoner case filed pursuant to 42 U.S.C. § 1983. The plaintiff failed to appear for an evidentiary hearing scheduled in this case on February 11, 2011. The notice setting the evidentiary hearing was entered on October 28, 2010. On December 7, 2010, the plaintiff notified court personnel via telephone that he had been released from prison and would forward a notice of change of address. The plaintiff's notice of address change (# 59) was filed on December 23, 2010.

The plaintiff failed to appear for a hearing before this court that had been noticed over a month prior to his notifying the court about his release from prison. Furthermore, there is no record that the plaintiff contacted the court to seek a continuance of the hearing for any reason. Because it appears that the plaintiff has simply lost interest in his lawsuit, it is recommended that this case be dismissed with prejudice for failure to prosecute.

The parties are referred to Local Rule 72.2(D) for the applicable procedure in the event any party desires to file objections to the findings and recommendations herein contained. The parties are warned that any such objections are required to be in writing and must be filed within fourteen days of this date. Failure to timely file written objections to the proposed findings, conclusions and recommendations contained in this report will bar an aggrieved party, except

upon grounds of plain error, from attacking on appeal unobjected-to proposed factual findings and legal conclusions accepted by the district court. *Douglass v. United Services Automobile Association*, 79 F.3d 1415 (5th Cir. 1996).

Respectfully submitted this 14th day of February, 2011.

/s/ David A. Sanders
UNITED STATES MAGISTRATE JUDGE